

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RYAN MASSART LINDSTROM,

Appellant.

No. 37554-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Ryan Lindstrom appeals his Thurston County convictions of driving under the influence of alcohol, third degree driving while license suspended or revoked, and hit and run involving an attended vehicle. He asserts that the trial court erred in refusing to suppress the evidence obtained in an investigatory stop of his vehicle. The stop was improper, he argues, because it was based on information supplied by an unreliable informant.¹ We affirm.

FACTS

On January 5, 2008, Olympia Police Officer Cliff Maynard overheard a call from dispatch about a hit and run. The crime had been reported by the victim, who was following the

¹ A commissioner of this court considered the matter pursuant to RAP 18.14 and referred it to a panel of judges.

offending driver and providing ongoing information about their location and direction. The victim also provided the make, model, color, and license number of the hit and run vehicle, and a description of the driver. When the two vehicles reached the area where Maynard was waiting, dispatch advised the victim to discontinue pursuit and wait at a designated location (a Shell Station), where she would be contacted by another officer.

Officer Maynard stopped the suspect vehicle. The driver, Lindstrom, acknowledged that he had been involved in a collision. He appeared intoxicated and failed field sobriety tests. A subsequent breath test showed a blood alcohol level of .255 and .264 g/210L.

ANALYSIS

Officer Maynard did not know the identity of the victim/informant at the time he stopped Lindstrom. Lindstrom contends that because she was unidentified, she must be considered unreliable.²

Warrantless searches are per se unreasonable, in violation of both the Fourth Amendment and article I, section 7 of the Washington Constitution. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). There are, however, a few exceptions, including consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view searches, and *Terry*³ investigative stops. *Duncan*, 146 Wn.2d at 171-72. The present case involves a *Terry* stop.

An officer may conduct an investigative *Terry* stop and briefly detain and question an

² In connection with this issue, Lindstrom challenges finding of fact number 6, concerning the information the officer received from dispatch. The finding accurately reflects Officer Maynard's testimony. Nothing in the record contradicts that testimony.

³ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

individual if that officer has a well-founded suspicion based on objective facts that the individual is connected to actual or potential criminal activity. *State v. Sieler*, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980) (citing *Terry*, 392 U.S. 1).

In cases where information from a concerned citizen provides the primary support for the officer's suspicion, the State must show that the information satisfies certain indicia of reliability established in the *Aguilar-Spinelli*⁴ test. *State v. Jackson*, 102 Wn.2d 432, 439-40, 688 P.2d 136 (1984). First, the State must show the trustworthiness of the informant's conclusions based on the underlying circumstances and sources of his knowledge. *Jackson*, 102 Wn.2d at 437. This prong is not an issue in this case. The informant was both an eyewitness to and the victim of conduct that was clearly criminal.

The second prong tests the veracity of the informant. *Jackson*, 102 Wn.2d at 437. Ordinarily, the court may assume the reliability of a tip from a citizen informant. *State v. Hopkins*, 128 Wn. App. 855, 863, 117 P.3d 377 (2005). Lindstrom argues that the presumption is not available here because Officer Maynard did not know the victim's identity when he stopped the car. That argument is not persuasive.

Even in cases where nothing is known about the informant, the veracity prong of the *Aguilar-Spinelli* test may be satisfied if the facts and circumstances under which the information was furnished reasonably support the inference that the informant was telling the truth. *State v. Chamberlin*, 161 Wn.2d 30, 41-42, 162 P.3d 389 (2007); *State v. Lair*, 95 Wn.2d 706, 709-10,

⁴ *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

630 P.2d 427 (1981); *State v. McCord*, 125 Wn. App. 888, 893, 106 P.3d 832, *review denied*, 155 Wn.2d 1019 (2005). For example, the victim of the crime reported may generally be presumed to be reliable. *See Schnepf v. Hocker*, 429 F.2d 1096, 1100 (9th Cir. 1970); *State v. Rodriguez*, 53 Wn. App. 571, 575, 769 P.2d 309 (1989). In addition, an informant who is readily identifiable is not truly anonymous. *See State v. McReynolds*, 104 Wn. App. 560, 573, 17 P.3d 608 (2000), *review denied*, 144 Wn.2d 1003 (2001).

Here, the informant was the victim of the hit and run, and her anonymity was more a function of the exigency of the circumstances than any conscious decision not to disclose her identity. This court has specifically recognized that the reliability requirement may be relaxed in cases where eyewitnesses to crime summon police and the exigencies are such that ascertainment of identity and background of the informants would be unreasonable. *See State v. Northness*, 20 Wn. App. 551, 555, 582 P.2d 546 (1978); *see also State v. Morsette*, 7 Wn. App. 783, 784-86, 502 P.2d 1234 (1972).

Given the immediacy of the situation and the potential danger posed to the general public by an alleged hit-and-run driver, Officer Maynard properly relied upon the information provided by dispatch. While he did not, himself, know the victim's name, he did know that she had agreed to proceed to a designated location for further contact with law enforcement. Thus, he had good reason to believe that even if dispatch did not have her name, she was readily identifiable.

The veracity prong of the *Aguilar-Spinelli* test was satisfied under the circumstances and the facts known to Officer Maynard who properly relied on them when he stopped Lindstrom's vehicle. The judgment is affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, C.J.

PENOYAR, J.